IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9538 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT PANCHAYAT

Versus

DANUBHA (WRONGLY TYPED AS "DHANUBHA")

Appearance:

MR PV HATHI for Petitioners

MR TR MISHRA for Respondents

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /08/1999

C.A.V. JUDGEMENT

The petitioner in this petition has challenged the validity and legality of the award dated 13.7.1998 rendered by the Labour Court, Jamnagar, directing the petitioner to reinstate respondent No. 1 with 25% backwages. Notice of this petition was issued to the respondent. Shri T.R. Mishra, learned counsel, appears for the respondents. No affidavit has been filed on

behalf of the respondent. Learned counsel for the parties were heard at length and this petition can be finally disposed of at the admission stage.

2. The petitioners engaged respondent No. 1 as daily wager Chowkidar on purely temporary basis depending upon the requirement. Theft of iron bars was committed for which a report was lodged with the police of Jamnagar. Theft was committed on 17.4.1988. The petitioner was arrested in connection with theft case under Section 381 and 114 of I.P.C. Investigation was going on and ultimately charge-sheet was submitted and the petitioner faced trial. He was ultimately acquitted. On the basis of the report lodged with the police about the theft of iron bars, respondent No. 1's service was dispensed with on 18.4.1988 vide annexure-A. After acquittal from criminal case, respondent No. 1 raised industrial dispute. The matter was referred to the Labour Court and the Labour Court rendered the impugned award in favour of respondent No. 1.

3. The contention of the learned counsel for the petitioners has been that the award is presumptive, illegal and perverse. Whereas the learned counsel for the respondent No. 1 contended that the award is perfectly justified and requires no interference.

4. Normally, this court will not sit as a court of appeal over the award rendered by the Labour Court. However, this court will examine whether the award is legal and in accordance with law or whether it is perverse. An award is said to be legal and in accordance with law when it is passed after considering the relevant provisions of the law applicable to the facts of the case. An award is said to be perverse when it is rendered on mere presumptions, surmises and conjectures. An award is further said to perverse when it is passed without considering the material on record and the requirements of law applicable to the dispute referred for adjudication. Like-wise if complete adjudication is not made by the Labour Court, the award can be said to be illegal as well as perverse inasmuch as material defence taken by the petitioners was not taken into consideration by the Labour Court.

5. The Labour Court in the impugned award has emphasised the fact that no enquiry was conducted nor any show cause notice was given to the respondent No. 1 before termination and as such the order of termination is illegal and invalid and the respondent No. 1 is entitled to be reinstated. However, annexure-A which is

the order of removal of name of the respondent No. 1 from the muster roll dated 18.4.1988 was not properly considered by the Labour Court. Inter alia it states that "as you are arrested for the offence of theft your services are not required by this office and your name is removed from the muster of daily chowkidar and you are relieved from the post of daily wager chowkidar." Thus, actually it was an order relieving the daily wager respondent No. 1 because of his arrest in connection with criminal case of theft and further because his services were not required by the petitioner, name of the respondent No. 1 was ordered to be removed from the muster roll. It seems from the award that respondent No. 1 was considered by the Labour Court to be a temporary employee. Para 2 of annexure-C which is defence statement of the petitioners before the Labour Court shows that respondent No. 1 was working as daily wager chowkidar on purely temporary basis depending upon the requirement. It was therefore not a case of temporary employee rather purely temporary daily wager chowkidar who was engaged for working as chowkidar depending upon the requirement. No departmental enquiry or disciplinary proceedings were required to be initiated against such daily wager. It was not even the case where the daily wager was appointed for a continuous term. Consequently, the services of daily wager could be dispensed with at any time without any prior notice. Moreover, when there was no requirement and no work was available, services of daily wager could be dispensed with by the employer. A daily wager has no right to post and his disengagement cannot be said to be arbitrary. The apex court in Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar & Ors., Judgement Today 1997 (4) SC 560 held that daily wager had no right to posts and their disengagement is not arbitrary. Since they are temporary employees working on daily wages, their disengagement from service cannot be treated under Industrial Disputes Act. If daily wager, according to the view of the apex court, has no right to post he cannot claim reinstatement on post which was purely temporary and in the nature of daily wager. In this view of the matter the order of reinstatement is patently illegal.

6. Learned counsel for the respondent No. 1, however, relying on apex court's verdict in Rattan Singh Vs. Union of India and Another (1997) 11 SCC 396 contended that Section 25, 25B and 25F of the Industrial Disputes Act are applicable to termination of daily rated workman who had served for requisite statutory minimum period in a year. Hence, termination of service of such workman without complying with Section 25F is illegal.

However, in this very case the apex court granted compensation only and did not confirm the order of reinstatement. In this case 20 long years elapsed between termination and the award and as such only compensation was awarded. In the instant case also, the services of respondent No. 1 were dispensed with on 18.4.1988 whereas the award was given on 13.7.1998 as such practically more than 10 years elapsed between the date of discharge and the date of award, hence also reinstatement cannot be said to be justified.

7. There is yet another difficulty in getting the award enforced because it was not considered by the Labour Court that the petitioners contended that no post exists on which respondent No. 1 can be reinstated. There is no finding of the Labour Court that there was regular post of chowkidar on which the respondent No. 1 was appointed though as a daily wager. If there was no post, the question of reinstatement to that post does not arise. The award does not indicate in the operative portion as to on which post respondent No. 1 is to be reinstated. The order of reinstatement could not be passed unless there existed vacant post. It is definite stand of the petitioners that no vacant post of chowkidar existed and the work was taken from unskilled workers as and when the demand arose. In view of this, the order of reinstatement is not only illegal but impractical.

8. Another contention has been that no regular enquiry was required in case daily wager. The learned counsel for the respondent No. 1 however contended that it was termination on the ground of misconduct of respondent No. 1, hence non-compliance of basic requirement of rule of natural justice would render the termination order illegal. The rules of natural justice according to learned counsel for the respondent No. 1, require a regular enquiry. I am, however, unable to agree with this contention. If the daily wager has no right to post it is difficult to conceive that in case of daily wager whenever termination or retrenchment is ordered or daily wager is ordered to be ceased to work, regular enquiry should be conducted. If this is followed then it would be impossible for any employer to run the administration or industry. The learned counsel for the respondent No. 1 further contended that since the order of termination contained in Annexure-A casts a stigma on the respondent No. 1, the rules of natural justice require that regular enquiry should have been conducted. In my opinion, on account of arrest of the respondent No. 1, in connection with theft case and further because services of respondent No. 1 were not required, his name

was ordered to be removed from the muster roll of daily wager chowkidar and he was relieved from that post with immediate effect. If services of respondent No. 1 were not required by the petitioners they were justified in discontinuing services of the respondent No. 1. It was not mainly on the ground of arrest of respondent No. 1 in connection with criminal case that his name was removed from the muster roll of chowkidar. Moreover, when police investigation was already under progress, simultaneous departmental enquiry was uncalled for. It was not a case where the FIR was unfounded. The police investigated the case, submitted charge-sheet and respondent No. 1 faced trial. Ultimately, he was acquitted. It emerges from the record and the petition that because the witnesses did not support the prosecution that the respondent No. 1 was acquitted. If the witnesses turned hostile and acquittal was recorded it cannot be said to be total failure on the part of the prosecution in establishing the charges against respondent No. 1. Moreover, the judgement of the criminal court has not been filed in spite of undertaking given in the writ petition. Consequently, it cannot be ascertained whether it was a clear cut acquittal or acquittal on ground of benefit of doubt. Unless there was clear finding of the criminal court that the respondent No. 1 was not involved in theft, it cannot be said that the order of removal of name of the respondent No. 1 amounted to stigma.

9. An employer engages a chowkidar for proper supervision of the goods and material. If the chowkidar does not conduct properly and theft is committed in spite of his employment, the employer can be said to be justified in observing that services of such chowkidar are no more required. Therefore, it was not a case of removal of name of the respondent No. 1 from the muster roll due to some stigma. As such no departmental enquiry was needed. The contrary view taken by the Labour Court appears to be contrary to law.

10. It further appears that material plea raised by the petitioners regarding loss of confidence in the respondent No. 1 was not answered by the Labour Court in the impugned award. The learned counsel for the petitioners contended that it was a case of loss of confidence in the mind of the petitioners inasmuch as theft was committed when respondent No. 1 was looking after the goods and material of the petitioners. Loss of confidence was further entertained in the mind of the petitioners because a criminal case was registered against respondent No. 1 and he faced trial before the

competent court. Despite acquittal, the petitioners had reasonable apprehension of loss of confidence in the respondent No. 1. Acquittal in criminal case was probably because the witnesses did not support the prosecution and turned hostile. This was alleged in para 4 of the writ petition. The learned counsel for the respondent No. 1 on the other hand contended that loss of confidence should have been established by the petitioners and since this was not done, the order of termination is certainly illegal and invalid. The learned counsel for the petitioners on the other hand contended that this plea was taken and evidence was adduced on the point but no finding has been given by the Labour Court on this aspect of the case. It is evident from the award that no finding has been given by the Labour Court whether the petitioners' plea of loss of confidence is sustainable or it is imaginary. The plea of loss of confidence is partly subjective and partly objective. It is partly subjective because it is for the employer to form opinion regarding the employee whether he commands confidence of the employer or not. However, this subjectivity should not be arbitrary. There should be something objective, namely, some material on which the employer can be said to be justified in entertaining the plea of loss of confidence in the employee. This plea in the instant case could reasonably be entertained by the employer from the fact that a criminal case was registered, it was investigated and ultimately charge-sheet was submitted and the respondent No. 1 faced trial. Mere acquittal because the witnesses did not support the prosecution cannot be said to be a ground for holding that the plea of the employer was illusory. Moreover, the order of acquittal was subsequent to the order of discharge contained in Annexure-A and the order of acquittal of the respondent No. 1 by a competent court would not relate back to the date of order of discharge. When the order of discharge was passed the petitioners could not have anticipated that ultimately respondent No. 1 would be acquitted. It was not a case of malicious prosecution of respondent No. 1 at the instance of the petitioners. If the employer entertains a reasonable belief of want of confidence in the employee it would not be in the interest of administration to force the employer to reinstate and retain such employee on its roll. Consequently this has also been a valid ground for rendering the order of reinstatement invalid.

11. The order of reinstatement is further invalid because the labour court has not given clear finding that there still exists post on which the respondent No. 1 could be reinstated. A vague direction for reinstatement

on the facts and circumstances of the case would create problems in getting the award implemented and executed. The learned counsel for the respondent No. 1 contended that the respondent No. 1 was working for number of years and it is difficult to believe that there is no post. However, from the material on record it is clear that the respondent No. 1 was not sure when he was given appointment and he was also not sure for how may years he was working on the post. If there was no regular post of chowkidar and casual work was taken from daily wager as chowkidars it cannot be said that the respondent No. 1 could legally be reinstated to the post of chowkidar or to the muster roll of daily wagers. It would again be improper to compel the employer to reinstate daily wager whose services could be dispensed with at any time without any notice.

12. For the reasons given above, the order of reinstatement given by the Labour Court is patently illegal and this portion of the award cannot be sustained.

13. So far as the award of 25% backwages is concerned, it is found from the record that the Labour Court has totally ignored the material admission of the respondent No. 1. There is categorical admission of the respondent No. 1 that he was working gainfully after the impugned order and in between when the impugned award was passed. In para 7 of the award it is mentioned that the respondent No. 1 was doing casual labour work and was earning Rs.200/- to Rs. 300/- per month. He further admitted that he and his wife were earning and was meeting monthly expenses of Rs. 1200/-. The Labour Court itself found that the respondent No. 1 could easily earn between Rs. 700/- and Rs. 800/- per month and as such it refused to grant full backwages to the respondent No. 1. However, the material illegality committed by the Labour Court on this point is that in para 2 of the award it is mentioned that the respondent No. 1 was employed by the petitioners as daily wager on Rs. 20/- per day. If this is so then he could have earned Rs. 600/- per month when he remained employee as daily wager with the petitioners. If in the alternative employment the respondent No. 1, according to the Labour Court, could earn Rs. 700/- to Rs. 800/- per month there was no question of any financial loss to the respondent No. 1 by the order of discharge. As such, the order for payment of 25% backwages for a period of ten years is not only illegal but against the admission of the respondent No. 1 and unnecessary financial burden

on the petitioners. Thus, this portion of the award also cannot be sustained.

14. In the result, I find that the entire award is rendered illegal and it has to be quashed.

15. The petition therefore succeeds and is allowed. The impugned award dated 13.7.1998 is hereby quashed with no order as to costs.

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